

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
                                 Plaintiff, )  
                                  )  
                                 v. ) Civil Action No.  
                                  )  
                                  )  
VERSATILE METALS, INC., )  
                                  )  
                                  )  
                                 Defendant. )  
                                  )  
                                  )  
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**COMPLAINT**

Plaintiff, the United States of America, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

Nature of the Action

1. This is a civil action brought pursuant to Sections 107(a)(2) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) of 1980, as amended, 42 U.S.C. §§ 9607(a)(2) and 9613(g)(2), for recovery of environmental response costs incurred by the United States at the Metal Bank of America, Inc. Superfund Site in Philadelphia, Pennsylvania.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Eastern District of Pennsylvania pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b)(2).

Defendant

4. Defendant Versatile Metals, Inc. (“Versatile Metals”) is a corporation formed under the laws of the State of Kentucky with its principal place of business in Schaumberg, Illinois. Versatile Metals’ primary business is metals trading.

Description of the Site

5. From approximately December 1984 through May 1985, Versatile Metal leased and operated a metal scrap yard at 6801 State Road, Philadelphia, Pennsylvania (“6801 State Road Property”), which is part of the Metal Bank of America, Inc. Superfund Site (“Site”).

6. The 6801 State Road Property consists of approximately six acres, most of which are currently covered by an asphalt cap.

7. Besides the 6801 State Road Property, the Site includes a subterranean sewer line owned by the City of Philadelphia. This sewer line drains to the Delaware River.

8. From approximately 1969 to 1984, Metal Bank of America, Inc. (“Metal Bank”), a wholly owned subsidiary of Union Corporation (“Union Corp.”) and a former owner of the 6801 State Road Property, operated a metal scrapyard and transformer-reclamation facility at the 6801 State Road Property, as well as at a nearby, separate facility on Milnor Street (“the Cottman Avenue Site”).

9. Electrical transformers, like the ones processed by Metal Bank at the Site, generally had an outer metal casing with a copper core immersed in dielectric fluid or oil used

for insulation and cooling purposes. Dielectric fluids in scrap transformers processed at the Site frequently contained polychlorinated biphenyls ("PCBs"), which have been associated with certain human cancers and other diseases.

10. In November 1984, Versatile Metals and Metal Bank entered into an agreement for liquidating Metal Bank's inventory at the 6801 State Road Property, with Versatile Metals acting as a broker for Metal Bank.

11. In January 1985, Versatile Metals and Metal Bank entered into a lease/purchase agreement for the 6801 State Road Property and for the sale of Metal Bank's other assets at the Site, including the inventory, equipment, and machinery located there.

12. From approximately January 4, 1985, until about May 23, 1985, Versatile Metals was engaged in the sale of the scrap-metal inventory and other items it had purchased from Metal Bank. This scrap metal was stored outdoors in large piles at the 6801 State Road Property.

13. In late April 1985, Versatile Metals discovered substantial areas of oil-stained soil at the Site and notified Metal Bank. Sampling conducted by Metal Bank's environmental consultant revealed significant PCB contamination at the 6801 State Road Property. At Metal Bank's request, Versatile Metals agreed to vacate the 6801 State Road Property in late May 1985.

14. After conducting further investigation, Metal Bank's environmental consultant concluded there was substantial contamination of the 6801 State Road Property that was the result of both long-term and recent spills of PCBs from capacitors and transformers that were mixed in the piles of scrap-metal inventory. Versatile Metals likely caused spills of PCBs during its operations at the 6801 State Road Property when it mishandled transformers or capacitors.

15. Metal Bank performed a private-party environmental response action (or cleanup) at the 6801 State Road Property in 1985 and 1986.

Prior Private-Party Litigation

16. Versatile Metals filed a civil suit in the United States District Court against Metal Bank and its parent Union Corp. in July 1985, alleging damages under Pennsylvania law for breach of express warranties, breach of implied warranties, breach of contract, and fraudulent misrepresentation.

17. Metal Bank counterclaimed under Pennsylvania law for breach of contract, breach of lease, breach of an indemnification clause, waste, and fraud. Metal Bank also filed a private-party cost-recovery action under Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), for response costs Metal Bank incurred during its cleanup of the Site.

18. After a trial, a federal jury found in 1988 that, on the Pennsylvania law claims, Versatile Metals was fifty-five percent responsible and Metal Bank forty-five percent responsible for the contamination at the Site.

19. On Metal Bank's CERCLA claims, U.S. District Court Judge James McGirr Kelly found that Versatile Metals was liable under Section 107(a) of CERCLA for any contamination that occurred at the Site after November 20, 1984, and that this contamination occurred because of Versatile Metals' mishandling of the scrap-metal inventory and failure to use reasonable care.

EPA's Response Actions

20. EPA conducted an extensive investigation of the Site in 2007 and 2008 under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). This investigation revealed that elevated levels

of PCBs and other hazardous substances remained at depth in soils at the Site, despite Metal Bank's earlier remediation efforts.

21. In 2011, EPA investigated the Site further and found PCBs were being released via groundwater into the sewer line beneath the Site. This sewer line, which was constructed with bricks and is owned by the City of Philadelphia, discharges to the Delaware River about a quarter-mile from the Site.

22. Pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), EPA issued an Action Memorandum on September 28, 2011, selecting a removal action for the Site that included, among other things, installation of an impermeable liner in the sewer line beneath the Site to prevent releases of PCBs to the Delaware River. The Action Memorandum also required the repair and replacement of a damaged asphalt cover at the Site to prevent infiltration of surface- and storm-water beneath the cover.

23. A removal action was conducted at the Site from late October 2015 to October 2016 using monies from the Hazardous Substance Response Trust Fund, commonly referred to as the Superfund.

#### General Allegations

24. Defendant Versatile Metals is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Site.

27. There has been a “release or threatened release” of hazardous substances into the environment at the Site, as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

28. In accordance with Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and the National Oil and Hazardous Substances Contingency Plan (“NCP”), 40 C.F.R. Part 300, EPA conducted a removal action at the Site to protect public health, welfare, or the environment. Through June 6, 2018, EPA has incurred \$1,462,582.90, including prejudgment interest, for its response actions related to the Site.

CAUSE OF ACTION  
(Recovery of Response Costs)

29. The foregoing Paragraphs are incorporated by reference as if fully stated herein.

30. The United States incurred costs authorized by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), because of the release or threat of release of hazardous substances from the Site.

31. The United States’ activities related to the Site were “response” actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

32. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the NCP, which was promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300.

33. Defendant was an operator of the Site at a time when hazardous substances were disposed of there.

34. Therefore, pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), Defendant is jointly and severally liable for all costs of response action incurred by the United States in relation to the Site.

**SECOND CAUSE OF ACTION**  
(Declaratory Judgment)

35. The foregoing Paragraphs are incorporated by reference as if fully stated herein.

36. The United States will continue to incur response costs at the Site for, among other things, inspections or repair of the impermeable sewer-lining and asphalt cover installed at the Site as part of the removal action, as well as additional site assessment.

37. Defendant is subject to a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability for response costs or damages that will be binding on any subsequent actions to recover further response costs or damages.

**PRAAYER FOR RELIEF**

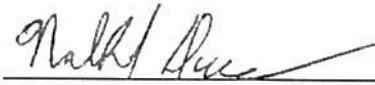
WHEREFORE, the United States of America respectfully requests that this Court enter a judgment against Defendant as follows:

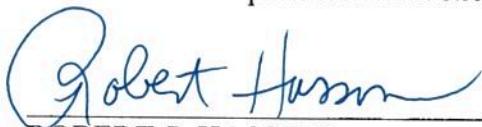
A. Finding Defendant jointly and severally liable pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and ordering Defendant to pay all response costs incurred by the United States, plus accrued interest as provided by Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

B. Entering a declaratory judgment of liability under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendant that will be binding on any subsequent action by the United States to recover further response costs or damages incurred at the Site.

C. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

  
NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

  
ROBERT S. HASSON  
Special Attorney  
JOHN SITHER  
Senior Trial Attorney  
Environmental Enforcement Section  
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Eastern District of Pennsylvania

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Philadelphia, PA 19103  
[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>											
United States of America		Versatile Metals, Inc.											
(b) County of Residence of First Listed Plaintiff <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant <b>Cook County, Illinois</b> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>											
		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.											
(c) Attorneys (Firm Name, Address, and Telephone Number)		Attorneys ( <i>If Known</i> )											
Robert S. Hasson, U.S. Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103; (215) 814-2672.		Andrew L. Schulkin, Lathrop Gage, 155 N. Wacker Drive, Suite 3000, Chicago, IL 60606-1787; (312) 920-3311.											
<b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i>		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>											
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4										
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	Citizen of Another State	PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5										
		Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 Foreign Nation PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6										
<b>IV. NATURE OF SUIT</b> <i>(Place an "X" in One Box Only)</i>													
<b>CONTRACT</b>		<b>TORTS</b>											
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other		<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157		<b>OTHER STATUTES</b> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act			
<b>REAL PROPERTY</b>		<b>CIVIL RIGHTS</b>		<b>PRISONER PETITIONS</b>		<b>PROPERTY RIGHTS</b>		<b>SOCIAL SECURITY</b>		<b>FEDERAL TAX SUITS</b>			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education		<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609			
						<b>IMMIGRATION</b>							
						<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions							
<b>V. ORIGIN</b> <i>(Place an "X" in One Box Only)</i>													
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 7 Interpleader	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File						
<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ): <b>42 U.S.C. 9607(a) and 9613(q)</b>											
		Brief description of cause: <b>Cost recovery action for environmental response costs.</b>											
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		<b>DEMANDS</b> 1,487,174.47		CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							
<b>VIII. RELATED CASE(S) IF ANY</b>		<i>(See instructions):</i>		JUDGE		DOCKET NUMBER							
DATE	09/24/2018		SIGNATURE OF ATTORNEY OF RECORD <i>Robert Hasson</i>										
<b>FOR OFFICE USE ONLY</b>													
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE									

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

## DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: U.S. Dept. of Justice, ENRD-EES, P.O. Box 7611, Washington, DC 20044-7611

Address of Defendant: 913 Plum Grove Road, Suite A, Schaumburg, IL 60173

Place of Accident, Incident or Transaction: 6801 New State Road, Philadelphia, PA 19135

## RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes  No

I certify that, to my knowledge, the within case  is /  is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 09/25/2018

Attorney-at-Law / Pro Se Plaintiff

80596 (PA)

Attorney I.D. # (if applicable)

CIVIL: (Place a  in one category only)

## A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts  
 2. FELA  
 3. Jones Act-Personal Injury  
 4. Antitrust  
 5. Patent  
 6. Labor-Management Relations  
 7. Civil Rights  
 8. Habeas Corpus  
 9. Securities Act(s) Cases  
 10. Social Security Review Cases  
 11. All other Federal Question Cases  
 (Please specify) Environmental Matters (CERCLA)

## B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts  
 2. Airplane Personal Injury  
 3. Assault, Defamation  
 4. Marine Personal Injury  
 5. Motor, Vehicle Personal Injury  
 6. Other Personal Injury (Please specify)  
 7. Products Liability  
 8. Products Liability - Asbestos  
 9. All other Diversity Cases  
 (Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION  
(The effect of this certification is to remove the case from eligibility for arbitration)I, Robert S. Hasson, counsel of record or pro se plaintiff, do hereby certify

Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs.

Relief other than monetary damages is sought.

DATE 09/24/2018

Attorney-at-Law / Pro Se Plaintiff

SEP 25 2018

PA 80596

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

United States of America,

Plaintiff

CIVIL ACTION

v.

Versatile Metals, Inc.,

Defendant

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

09/24/2018  
Date

(215) 814-2672  
Telephone

Robert Hasson  
Robert S. Hasson

(215) 814-2603  
FAX Number

UNITED STATES of AMERICA  
Attorney for

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E-Mail Address